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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,887

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Lester Chu

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EXAMINER

ANDERSON, JOHN A

ART UNIT

PAPER NUMBER

3696

MAIL DATE

DELIVERY MODE

12/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,887	<b>Applicant(s)</b> CHU ET AL.	
	<b>Examiner</b> JOHN A. ANDERSON	<b>Art Unit</b> 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) Claims 5-14, 16, 18-34, 37-39, 41, 45-48, 50, 52-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) Claims 5-14, 16, 18-34, 37-39, 41, 45-48, 50, 52-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date  
:03/15/2004,10/24/2005,  
02/15/2006,10/15/2008, 02/03/2009, 05/11/2009,06/30/2009, 09/09/2009 and 11/09/2009 .

**DETAILED ACTION**

***Response to Amendment***

1. In the amendment filed 09/23/2009, the following has occurred: Claims 5-14,16,18-34,37-39,41,45-48,50,52-75 are pending and are presented for examination.

***Information Disclosure Statement***

2. The information disclosure statement dated 03/15/2004,10/24/2005, 02/15/2006,10/15/2008, 02/03/2009, 05/11/2009,06/30/2009, 09/09/2009 and 11/09/2009 have been considered.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 56-57,59,61-65,67-69,71-73,75,5-13,16,26,31-34,45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (PGPub 2005/0015307) and further in view of Yeiser (PGPub 2002/0032603).
6. As regards claims 56,61, 62,63,64,65,75 , Simpson discloses a method for transmitting information in the form of a response to a request, comprising:  
calculating, in a computer server, a position adjustment factor for a listing affiliated with the position adjustment factor, the affiliated listing to be included in the response at a position;  
using the position adjustment factor to influence the position of the affiliated listing associated with the position adjustment factor among a plurality of listings

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in the response provided by the computer server.[0017;0071]

Simpson does not disclose influencing, in the computer server, the position adjustment factor by a per-hit fee associated with the affiliated listing; and

Yeiser discloses influencing, in the computer server, the position adjustment factor by a per-hit fee associated with the affiliated listing; [0019]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Yeiser in the device of Simpson .The motivation would have been to apply a charge based on a criteria established by the administrator.

7. As regards claims 57 and 73 , Simpson does not disclose the method of claim 56, wherein calculating the position adjustment factor includes accessing an advertiser account record.

Yeiser discloses wherein calculating the position adjustment factor includes accessing an advertiser account record.[0029]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Yeiser in the device of Simpson . The motivation

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would have been to apply a charge based on a criteria established by the administrator.

8. As regards claims 59 and 69, Simpson discloses the method of claim 56, further comprising influencing calculating the position adjustment factor by an entity-based characteristic.[0017]
9. As regards claims 67 and 68, Simpson discloses the computer-readable medium of claim 62, wherein the position adjustment factor is negative, said negative position adjustment factor indicating an adjustment to a less desirable position among the plurality of listings in the response.[0047]
10. As regards claims 26 ,31,34 and 71 , Simpson discloses the computer-readable medium of claim 62, wherein each listing in the plurality of listings is associated with at least one priority metric, the medium further comprising instructions for ordering the plurality of listings in accordance with the at least one priority metric, and influencing the priority metric for the affiliated listing by the position adjustment factor.[0013]
11. As regards claim 72 , Simpson discloses the computer-

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readable medium of claim 62, further including instructions for automatically setting the position adjustment factor in accordance with at least one administrative rule from a set of administrative rules and by accessing at least one advertiser attribute from a set of advertiser attributes.[0014]

12. As regards claim 5, Simpson discloses the method of claim 56, further comprising influencing the position of at least one said listing in said plurality of listings within said response by at least one relationship between said plurality of listings and a plurality of groups of listings.[0064]
13. As regards claims 6,32,33 , Simpson discloses the method of claim 56, further comprising influencing said position adjustment factor by a search term.[0014]
14. As regards claim 7 , Simpson discloses the method of claim 6, further comprising influencing said search term by the magnitude of said position adjustment factor.[0013]
15. As regards claim 8 , Simpson discloses the method of claim 6, wherein the position adjustment factor is one of a plurality of position adjustment factors, the method further comprising using said search term to selectively identify at least



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one said position adjustment factor.[0014]

16. As regards claim 9 , Simpson does not disclose the method of claim 56, further comprising influencing said position adjustment factor by a relationship between an advertiser and an administrative organization.

Yeiser discloses further comprising influencing said position adjustment factor by a relationship between an advertiser and an administrative organization.[0081]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Yeiser in the device of Simpson . The motivation would have been to apply a charge based on a criteria established by the administrator

17. As regards claim 10 , Simpson does not disclose The method of claim 9, further comprising influencing said position adjustment factor by a length of time relating to said relationship.

Yeiser discloses further comprising influencing said position adjustment factor by a length of time relating to said relationship.[0081]

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It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Yeiser in the device of Simpson . The motivation would have been to apply a charge based on a criteria established by the administrator.

18. As regards claim 11 , Simpson does not disclose (Previously presented) The method of claim 9, further comprising influencing said position adjustment factor by a number of listings relating to said relationship.

Yeiser discloses further comprising influencing said position adjustment factor by a number of listings relating to said relationship[0081]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Yeiser in the device of Simpson . The motivation would have been to apply a charge based on a criteria established by the administrator

19. As regards claim 12 , Simpson discloses the method of claim 9, further comprising influencing said position adjustment factor by a lifetime fee total relating to said relationship.[0058]

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20. As regards claim 13 , Simpson discloses the method of claim 9, further comprising influencing said position adjustment factor by a non-lifetime fee total relating to said relationship.[0058]
21. As regards claim 16 , Simpson does not disclose the method of claim 56, further comprising influencing said position adjustment factor by a time of year. Yeiser discloses further comprising influencing said position adjustment factor by a time of year.[0030]
22. As regards claim 13 , Simpson discloses The method of claim 56, wherein said position adjustment factor does not relate to a listing-based attribute.[0017]
23. As regards claim 13 , Simpson discloses the method of claim 56, further comprising influencing said position adjustment factor by a search attribute.[0014]
24. Claims 14,58,60,66,70 and 74 rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (PGPub 2005/0015307) in view of Yeiser (PGPub 2002/0032603) and in further view of Cheung (Patent 7,483,886).

25. As regards claim 14 , Simpson does not disclose the method of claim 56, further comprising a bid amount, wherein said position adjustment factor is not influenced by a bid amount.

Cheung discloses comprising a bid amount, wherein said position adjustment factor is not influenced by a bid amount.[column 6 line 50-65]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Cheung in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

26. As regards claim 58 , Simpson does not disclose the method of claim 56, wherein the listings included in the response are not ordered in accordance to a bid amount associated with each listing.

Cheung discloses wherein the listings included in the response are not ordered in accordance to a bid amount associated with each listing .[column 7 line 1-29]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Cheung in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

27. As regards claims 60 and 70, Simpson does not disclose the method of claim 59, wherein the entity-based characteristic is at least one of: (a) an annual advertising budget; (b) a market capitalization value; (c) a subjective determination by an administrator.

Cheung discloses wherein the entity-based characteristic is at least one of: (a) an annual advertising budget; (b) a market capitalization value; (c) a subjective determination by an administrator.[Fig 1-9]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Cheung in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

28. As regards claims 66 , Simpson does not disclose The computer-readable medium of claim 62, further including instructions for:  
including the listings in the response in an order other than in accordance with a bid amount associated with each listing.

Cheung discloses including the listings in the response in an order other than in accordance with a bid amount associated with each listing. .[column 7 line 1-29]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Cheung in the device of Simpson. The motivation

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would have been to apply a charge based on a criteria established by the administrator.

29. As regards claim 74 , Simpson does not disclose the computer-readable medium of claim 62, further including instructions for:  
maintaining a profile for each of a plurality of advertisers; and  
influencing the position adjustment factor based on an advertiser profile

Cheung discloses maintaining a profile for each of a plurality of advertisers; and influencing the position adjustment factor based on an advertiser profile.[column 18 lines 62-66]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Cheung in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

30. Claims 18-25,27-28,37 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (PGPub 2005/0015307) and further in view of Yeiser (PGPub 2002/0032603) and in further view of skinner (Patent 7,295,996).

31. As regards claims 18 and 28, skinner discloses the method of claim 56,

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wherein at least one of said listings in said plurality of listings is associated with a fixed fee value. [column 1 lines 40-65]

32. As regards claims 19 and 27, skinner discloses The method of claim 18, wherein said affiliated listing is associated with said fixed fee value. [column 1 lines 40-65]
33. As regards claim 20 , skinner discloses The method of claim 56, wherein at least one of said listings in said plurality of listings is associated with an enhanced display fee value. [column 1 lines 40-65]
34. As regards claim 21 , skinner discloses The method of claim 20, wherein said affiliated listing is not associated with said enhanced display fee value. [column 1 lines 40-65]
35. As regards claim 22 , skinner discloses the method of claim 56, wherein at least one of said listings in said plurality of listings is associated with at least one per-hit fee value. [column 1 lines 40-65]
36. As regards claims 23 and 37 , skinner discloses The method of claim 22, wherein said affiliated listing is associated with the at least one per-hit fee value. [column 1 lines 40-65]

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37. As regards claim 24 , skinner discloses the method of claim 22, wherein each said listing is associated with the at least one per-hit fee value. [column 1 lines 40-65]
38. As regards claim 25 , skinner discloses the method of claim 24, wherein said plurality of listings are not ordered in accordance with the at least one per-hit fee value. [column 1 lines 40-65]
39. As regards claim 25 ,skinner discloses the method of claim 56, wherein said plurality of listings includes a first listing, wherein said first listing is associated with more than one said per-hit fee type. [column 1 lines 19-39]
40. Claims 38 -39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (PGPub 2005/0015307) and further in view of Yeiser (PGPub 2002/0032603) and in further view of Bullock (Patent 7,475,346).
41. As regards claims 38 and 39 , Bullock discloses the method of claim 37, wherein said per-hit fee is said variable per- hit fee.  
further comprising influencing said variable per-hit fee by said number of hits and a period of time in which to measure said number of hits. [column 2 lines 66-10]



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It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Bullock in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

42. Claims 29-30,46,48,50,52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (PGPub 2005/0015307) and further in view of Yeiser (PGPub 2002/0032603) and in further view of Davis D (Patent 6,269,361).
43. As regards claims 29, 30 and 52 , Davis discloses the method of claim 26, further comprising influencing said at least one priority metric by a category factor.[column 13 lines 50-60]  
further comprising influencing said at least one priority metric by a geography factor . [column 13 lines 50-60]
44. As regards claim 46 , Davis discloses the method of claim 56, wherein said position adjustment factor relates to an advertiser profile.[column 13 lines 42-49]
45. As regards claim 48, Davis discloses the method of claim 56, wherein said position adjustment factor is derived from at least one of: a seniority; an aggregate monetary value; a number of listings; and an advertiser profile.  
.[column 13 lines 42-49]

46. As regards claim 50, Davis discloses (Previously presented) The method of claim 56, further comprising automatically setting said position adjustment factor in accordance with at least one administrative rule from a set of administrative rules and by accessing at least one advertiser attribute from a set of advertiser attributes. [column 13 lines 50-60]
47. As regards claims 52-55, Davis discloses the method of claim 50, wherein said administrative rules include at least one of: a category hierarchy and a geography hierarchy. [column 13 lines 42-49]
- wherein said position adjustment factor is not influenced by a monetary value. [column 13 lines 42-49]
- wherein said position adjustment factor is not solely influenced by a monetary value. [column 13 lines 42-49]
- wherein said position adjustment factor is not influenced by a per-hit fee, and wherein said position adjustment factor is not influenced by an enhanced display fee. [column 13 lines 42-49]
- It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to Davis in the device of Simpson. The motivation would have been to apply a charge based on a criteria established by the administrator.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 15, 17, 35-36, 40, 42-44, 49 and 51 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN A. ANDERSON whose telephone number is (571)270-3327. The examiner can normally be reached on Monday through Friday 8:00 to 5:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John A Anderson/

Examiner, Art Unit 3696

John A Anderson

Examiner

Art Unit 3696

/J. A. A./

Examiner, Art Unit 3696

/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694